IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7516 of 1992

Date of Decision:02-08-2004

JIVANBHAI SHIVABHAI GARODA

Versus

UNION OF INDIA

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for reporting?

For the Petitioners:
MR PR THAKKAR for Petitio

For the Respondents:
MR JS YADAV for Respondents

PER: BHAWANI SINGH, CHIEF JUSTICE (C.A.V.):-

1. Petitioners were serving in the Security Force, a

Branch in the Indian Petrochemicals Corporation Limited (IPCL) Baroda, till 1972. Sometime during this year, Director General, Central Industrial Security Force (CISF), proposed to Management of IPCL that policy of the Central Government required security of CISF to protect

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Whether Reporters of Local Papers may be allowed to see the Judgment?

the Industries of the Government. Therefore, Security Force maintained by IPCL was sought to be inducted into CISF. When this proposal was conveyed to the employees of Security Force of IPCL, which included the petitioners and some other employees, induction was protested since it would cause injustice and inconvenience to the petitioners. It was stated that induction into CISF would mean transfer anywhere in India, which was neither conducive nor in the interest of the petitioners. Moreover, they had been engaged in Security Force of IPCL since they had lost their agricultural lands for the formation of IPCL Complex, and they belong to villages surrounding IPCL, meaning thereby, they were not prepared for the induction since it may result in transfers outside IPCL. Director General, CISF, IPCL Unit, Baroda, arranged meeting with IPCL Management and Representatives of the Petitioners. In the meeting, it was assured and promised by Director General, CISF that employees opting for induction in CISF, Vadodara, would not be transferred out of IPCL, Baroda, till promoted up to the rank of Inspector. This settlement was published in authenticated journal "Prerana" of IPCL. Accordingly, petitioners opted for induction in CISF and became its employees. In the absence of assurance against transfer till they are promoted to the rank of Inspector, they would not have opted for induction into CISF. This assurance was honoured by the authorities till 1983. Thereafter, the Commandant holding the charge of IPCL Unit, attempted to commit mischief against the interest of the petitioners giving a go by to the assurances and settlement of 1972 and the petitioners were transferred at his instance to States like Bihar, Andhra Pradesh, Kerala, Maharashtra, Madhya Pradesh, etc. Petitioners, belonging to nearby villages and belonging to Class III and IV grade in service, could not move out of IPCL Complex, Baroda. They protested against the transfers and represented to the authorities against the transfers, bringing to their notice the promise they had extended to them and the inconvenience they were likely to suffer. However, no attention was paid, therefore, some of the petitioners filed writ petition (Special Civil Application) challenging the transfers. High Court having said that existence of agreement was highly disputed question of fact, therefore, petition could not

be entertained, petitioners filed Civil Suits in Civil Court (S.D.), Baroda, obtained interim injunction restraining the respondents from transferring the petitioners. Later, this interim injunction was confirmed, transfers stayed, till the final disposal of the Suit. The appellate Court dismissed the Appeal against this order.

2. Thereafter, the respondents preferred a revision petition before this Court. Allowing the same, the Court directed the Civil Court to expedite the Suits. Civil Court, dismissed the suits, against which First Appeal is pending before the appellate Court, Baroda.

3. The petitioners represented to IPCL stating interalia that they belong to poor families. They have no other source of income except salary. They were aggrieved by the turn around of CISF, therefore, they could not be taken back by IPCL. Persistent efforts were made to secure relief from IPCL and the respondents, but nothing was done. Petitioners were constrained to approach the management collectively and protested the injustice meted out to them, sat before IPCL Corporate Office with a bonafide belief that the protest may invite the attention of IPCL Management to their genuine grievances. However, CISF took it serious act of misconduct and indiscipline, and passed orders for the dismissal of petitioners from service without serving notice, charge sheet and offering an opportunity of being heard and defend themselves, thereby committing flagrant violation of principles of natural justice. They submit that Rule 34, Central Industrial Security Force Rules 1969 (CISF Rules 1969) prescribes procedure for inflicting penalty, but the same was not followed, and punishment of dismissal from service was imposed on the petitioners, the action of the respondents is thoroughly capricious, arbitrary, unreasonable and unjustified, therefore, liable to be set aside. Petitioners preferred appeal to Director General, CISF, however, they were asked to file appeal before the DIG, CISF, Western Zone. Accordingly, it was followed up by reminders, but the same had been rejected. They also preferred appeal to Director General, CISF, but the same has also been rejected. Thereafter, they approached the President of India, highlighting injustice caused to them, which was sent to Ministry of Home, Central Government. When none of these authorities took decision on their appeals, representation was submitted to the Prime Minister of India on 13-05-1985. Petitioners submit that orders of dismissals from service be quashed, respondents directed to reinstate them in service with all privileges,

benefits and full backwages.

4. Through affidavit dated 6th April, 1993, CISF, IPCL Unit, Baroda, submitted that the Petition is not maintainable because of separate dismissal orders against the petitioners, therefore, separate cause of action. It is submitted that petitioners were formerly serving in Security Department of IPCL, and their employer was IPCL, Baroda. CISF was inducted in IPCL in accordance with the provisions of Section 14 of The Central Industrial Security Force Act, 1968. To avoid petitioners losing jobs, option was given to them for induction and absorption in CISF. Accordingly, an agreement was executed by the petitioners, and there was no stipulation that employees who opted to join CISF will not be transferred outside Baroda until they reached the rank of Inspector, rather, stipulation is that after induction they are liable to serve anywhere in India, however, the matter of transfer is subject to Civil Suits and not of this petition.

5. As regards the order of dismissal challenged in this petition, it is submitted that it was passed since they were members of Armed Force of the Union, CISF. The need of discipline is of paramount importance in CISF, petitioners indulged in agitational activities, which seriously and adversely affected the discipline in the Force, and the direct and resultant consequence of agitational activities of petitioners was creating serious law and order problems in the Unit of CISF, therefore, the disciplinary authority was satisfied for the reason recorded in writing that it was not reasonably practicable to follow the procedure prescribed for holding inquiry, therefore, the disciplinary authority in exercise of the powers conferred under Rule 37(b) of CISF Rules 1969 imposed penalty of dismissal from service upon the petitioners, the reasons are recorded in the original record of CISF Unit, Baroda, which is confidential and could be shown to the Court, therefore, in exercise of power under Rule 37(b) there was no need to follow the procedure prescribed, and principles of natural justice stand excluded. It is denied that CISF extended any kind of assurance to the petitioners at the time of their absorption in CISF, and terms and conditions of absorption, which were reduced into writing. Assuming that assurance was given by unauthorised person, the same cannot be said of CISF Authorities, as there cannot be any assurance against provisions. Negotiations between IPCL, petitioners and CISF are denied, similarly, the contents of article published in the magazine "Prerana", since it was not part of any settlement nor treated an

Authority and majority of watchmen were absorbed in CISF, who otherwise were to be retrenched and CISF was under no obligation to take them. Petitioners were transferred in administrative exigency and allegations of malafide against the Commandant are absolutely baseless and set up with great prejudice. Since IPCL is no longer the employer, representation could not be made to it. Petitioners represented to IPCL and not to CISF, therefore, created law and order problem for CISF. IPCL had nothing to do with the transfer of the petitioners. It was done by the CISF of which they were the employees. They adopted agitational course, displaying placards against CISF and IPCL. They did not resume duty during the strike period, thus, involved themselves in serious misconduct, therefore, it was not reasonably practicable to follow the procedure for holding inquiry. Action was taken in accordance with Rule 37(b) of CISF Rules, 1969, action is within the statutory provisions, therefore, it is not capricious, and the allegation that it is capricious, is unjustified; representation to Prime Minister of India has been decided by order dated 09-06-1989, petitioners have not resorted to statutory remedy available to them, they stand dismissed from service from 30-11-1985, there is no substance in the petition, therefore, deserves to be dismissed.

6. Before adverting to the submissions advanced by learned counsel for the parties, we may refer to some of the provisions of CISF Act, 1968 and CISF Rules, 1969. Section 7, 8 and 9 provide for superintendence and administration of the Force, dismissal, removal, etc. of members of the Force, appeal and revision and Section 10 provides for duties of members of the Force. Section 14 provides for deputation of the Force to Industrial undertakings in public sector. Section 15 envisages officers and members of the Force to be considered always on duty and liable to be employed anywhere in India, while Section 15-A imposes restrictions respecting right to form association, etc. Section 16 deals with responsibilities of member of the Force during suspension and Section 18 penalties for neglect of duty, etc. Section 22(2) authorises the Central Government to make rules for carrying out the purposes of this Act. They are quoted:

"7.Superintendence and administration of the Force.- (1) The superintendence of the Force shall vest in the Central Government, and subject thereto and to the provisions of this Act and of any rules made thereunder, the command, supervision and administration of the Force shall

vest in the Director-General.

(2) Subject to the provision of Sub-sec.(1), the administration of the Force within such local limits as may be prescribed shall be carried on by an Inspector-General, a Deputy Inspector-General, a Commandant, A Deputy Commandant or an Assistant Commandant in accordance with the provisions of this Act and of any rules made thereunder and every supervisory officer placed in charge of the protection and security of an industrial undertaking shall subject to any directions that may be given by the Central Government or the Director General in this behalf, discharge his functions under the general supervision, direction and control of the Managing Director of that undertaking.

8.Dismissal, removal, etc. of members of the Force.- Subject to the provisions of Art. 311 of the Constitution and to such rules as the Central Government may make under this Act, any supervisory officer may -

(i) dismiss, remove order for compulsory retirement of or reduce in rank any enrolled member of the Force whom he thinks remiss or negligent in the discharge of his duty or unfit for the same; or

(ii) award any one or more of the following punishments to any enrolled member of the Force who discharges in a careless or negligent manner or who by any act of his own renders himself unfit for the discharge thereof, namely:

(a) fine to any amount not exceeding seven days' pay or reduction in pay scale;

(b) drill, extra guard, fatigue or other duty;

(c) removal from any office of distinction or deprivation of any special employment;

(d) withholding of increment of pay with or without cumulative effect;

(e) withholding of promotion;

(f) censure.

9. Appeal and revision.- (1) Any enrolled member of the Force aggrieved by an order made under Sec.8 may, within thirty days from the date on

which the order is communicated to him, prefer an appeal against the order to such authority as may be prescribed, and subject to the provisions of Sub-sec.(2-A), Sub-sec. (2-B) and Sub-sec. (3), the decision of the said authority thereon shall be final:

Provided that the prescribed authority may entertain the appeal after expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filling the appeal in time.

(2) In disposing of an appeal, the prescribed authority shall follow such procedure as may be prescribed.

(2-A) Any enrolled member of the Force aggrieved by an order passed in appeal under Sub-sec.(1) may, within a period of six months from the date on which the order is communicated to him, prefer a revision petition against the order to such authority as may be prescribed and in disposing of the revision petition, the said authority shall follow such procedure as may be prescribed.

(2-B) The authority, as may be prescribed for the purpose of this sub-section, on a revision petition preferred by an aggrieved enrolled member of the Force or suo moto, may call for, within a prescribed period, the records of any proceeding under Sec.8 or Sub-sec.(2) or Sub-sec. (2-A) and such authority may, after making inquiry in the prescribed manner, and subject to the provisions of this Act, pass such order thereon as it thinks fit.

(3) The Central Government may call for and examine the record of any proceeding under Sec. 8, Sub-sec. (2), Sub-Sec.(2-A) or Sub-sec. (2-B) of this section and may make such inquiry or cause such inquiry to be made and subject to the provisions of this Act, may, pass such order thereon as it thinks fit:

Provided that no order imposing an enhanced penalty under Sub-sec.(2) or Sub-Sec. (3) shall be made unless a reasonable opportunity of being heard has been given to the person affected by such order.

10. Duties of members of the Force.- It shall be the duty of every member of the Force-

(a) promptly to obey and execute all orders lawfully issued to him by his superior authority;

(b) to protect and safeguard the industrial

undertaking owned by the Central Government together with such other installations as are specified by that Government to be vital for the carrying on of work in those undertakings, situate within the local limits of his jurisdiction:

Provided that before any installation not owned or controlled by the Central Government is so specified, the Central Government shall obtain the consent of the Government of the State in which such installation is situate;

(c) to protect and safeguard such other industrial undertakings and installations for the protection and security of which he is deputed under Sec.4;

(d) to protect and safeguard the employees of the industrial undertakings and installations referred to in Clauses (b) and (c);

(e) to do any other act conducive to the better protection and security of the industrial undertakings and installations referred to in Clause (b) and (c) and the employees referred to in Clause (d);

(f) to provide technical consultancy services relating to security of any private sector industrial establishments under Sec. 14-A;

(g) to protect and safeguard the organisations owned or funded by the Government and the employees of such organisations as may be entrusted to him by the Central Government;

(h) any other duty which may be entrusted to him by the Central Government from time to time.

11. to 13. xx xx xx

14.Deputation of the Force to Industrial undertakings in public sector.- (1) Subject to any general directions which may be issued by the Central Government, it shall be lawful for the Director-General on a request received in this behalf from the Managing Director concerned on an industrial undertaking in public sector, showing the necessity thereof, to depute such number of members of the Force as the Director General may consider necessary for the protection and security of that industrial undertaking and any

installations attached thereto and the members of the Force so deputed shall be at the charge of the Managing Director:

Provided that in the case of an undertaking, owned, controlled or managed,-

(i) by a Government company of which the Central Government is not a member;

(ii) by a corporation established by or under a Provincial or State Act,

no such request shall be entertained unless it is made with the consent of the Government of the State in which the undertaking is situate.

(2) If the Director General is of the opinion that circumstances necessitating the deputation of the member of the Force in relation to an industrial undertaking under Sub-sec. (1) have caused to exist, or for any other reason it is necessary so to do, he may, after informing the Managing Director of that industrial undertaking, withdraw the members of the Force so deputed:

Provided that the Managing Director may, on giving one month's notice in writing to the Director General require that the members of the Force so deputed shall be withdrawn, and the Managing Director shall be relieved from the date of expiration of such notice or from any earlier date on which the Force is so withdrawn.

(3) Every member of the Force, while discharging his functions during the period of deputation, shall continue to exercise the same powers and be subject to the same responsibilities, discipline and penalties as would have been applicable to him under this Act, if he had been discharging those functions in relation to an industrial undertaking owned by the Central Government.

15.Officers and members of the Force to be considered always on duty and liable to be employed anywhere in India.- (1) Every member of the Force shall, for the purpose of this Act, shall be considered to be always on duty, and shall, at any time, be liable to be employed at any place within India.

(2) Save as provided in Section in Sec.14, no member of the Force shall engage himself in any employment or office other than his duties under this Act.

15-A. Restrictions respecting right to form association, etc.- (1) No member of the Force

shall, without the previous sanction in writing of the Central Government or of the prescribed authority,-

(a) be a member of, or be associated in any way with, any other union, labour union, political association or with any class of trade unions, labour unions or political associations; or

(b) be a member of, or be associated in any way with, any other society, institution or association or organisation that is not recognised as a part of the Force or is not of a purely social, recreational or religious nature; or

(c) communicate with the press or public or cause to be published any book, letter or other document except where such communication or publication is in the bona fide discharge of his duties or is of a purely literary, artistic or scientific character or is of a prescribed nature.

Explanation.- If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature under Clause (b) of this Sub-section the decision of the Central Government thereon shall be final.

(2) No member of the Force shall participate in, or address, any meeting or take part in any demonstration organised by any body of persons for any political purposes or for such other purposes as may be prescribed.

16.Responsibilities of member of the Force during suspension.- A member of the Force shall not by reason of his suspension from office cease to be a member of the Force, and he shall, during that period, be subject to the same responsibilities, discipline and penalties to which he would have been subjected if he were on duty.

17. xxx xxx

18.Penalties for neglect of duty, etc.- (1) Without prejudice to the provisions contained in Sec.8, every member of the Force who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by a supervisory officer, or who shall withdraw from the duties of his office without

permission, or who, being absent on leave, fails without reasonable cause, to report himself for duty on the expiration of the leave, or who engages himself without authority in any employment other than his duty as a member of the Force, or who shall be guilty of cowardice, may be taken into Force custody and shall, on conviction, be punished with imprisonment for a term which may extend to one year.

(2)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this section shall be cognizable and non-bailable.

(2-A)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government may invest the Commandant with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by an enrolled member of the Force and punishable under this Act or any offence committed by an enrolled member of the Force against the person or property of another member of the Force:

Provided that-

(i) when the offender is on leave on or absent from duty; or

(ii) when the offence is not concerned with the offender's duties as an enrolled member of the Force; or

(iii) when it is a petty offence even if connected with the offender's duties as an enrolled member of the Force; or

(iv) when, for reasons to be recorded in writing, it is not practicable for the Commandant invested with the powers of a Magistrate to inquire into or try an offence,

The offence may, if the prescribed authority within the limits of whose jurisdiction the offence has been committed so requires, be inquired into or tried by an ordinary Criminal Court having jurisdiction in the matter.

(3)Nothing contained in this section shall be construed to prevent any member of the Force from being prosecuted under any other law for any offence made punishable by that law, or for being liable under any such law to any other or higher penalty or punishment than is provided for such offence by this section:

Provided that no person shall be punished twice for the same offence.

19 to 22 xx xx xx

22.Power to make rules.- (1) xx xx

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for,-

(a) regulating the classes, ranks, grades, pay and remuneration of members of the Force and their conditions of service in the force;

(b) regulating the powers and duties of members of the Force authorized to exercise any functions by or under this Act;

(c) fixing the period of service for members of the Force;

(d) prescribing the description and quantity of arms, accountrements, clothing, and other necessary articles to be furnished to the members of the Force;

(e) prescribing the places of residence of members of the Force;

(f) institution, management and regulation of and fund for any purpose connected with the administration of the Force;

(g) regulating the punishments and prescribing authorities to whom appeals shall be preferred from orders of punishments, or remission of fines or other punishments, and the procedure to be followed for the disposal of such appeal;

(gg) regulating matters with respect to Force custody under this Act including the procedure to be followed for taking persons into such custody;

(ggg) regulating matters with respect to disposal of cases relating to offences under this Act and specifying the places in which persons convicted under this Act may be confined;

(gggg) prescribing authority under Sub-sec.(2-A) of Sec.9, and the procedure to be followed by such authority in disposing of the revision petition;

(ggggg) prescribing authority under Sub-sec. (2-B) of Sec.9, the period within which such authority may call for the records and the manner in which such authority may make inquiry;

(h) the terms and conditions subject to which members of the force may be deputed under Sec.14 and the charges therefor;

(hh) the manner in which and the fee on payment of which the technical consultancy services shall be provided under Sub-sec. (1) of Sec. 14-A; and

(i) any other matter which has to be, or may be, prescribed or in respect of which rules are required to be made under this Act.

(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session on successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

7. Chapter II Rule 4 to 8 provide for duties of Inspector-General, Deputy Inspector General, Managing Director and General Manager, Commandant (Chief Security Officer), Deputy Commandant and Assistant Commandant (Security Officer). Chapter VII - Conditions of service and conduct, Rules 24 and 25 deal with right to form service associations and recognition of associations. They are quoted:

"24.Right to form service associations.-(1) No supervisory officer or member of the Force shall enrol himself as a member of or work for or make any contribution directly or indirectly to any Trade Union except with the previous permission of the Central Government.

(2)A supervisory officer of the Force may, however, be a member of an association composed entirely of members of the service to which he belongs or of gazetted officers of the industrial undertakings in the public sector. A member of the Force may, however, be a member of an association composed of members of the service to which he belongs or an association composed

entirely of members of the Force and constituted with the approval of the Inspector-General.

(3)Any such association, as is mentioned in Sub-rule (2) shall be, however, be an association that may affiliate itself to any union or other association whatsoever.

25.Recognition of associations.- The Central Government may, from time to time, specify the authority competent to recognize associations, the conditions for their recognition and the privileges of such recognised associations and also provide for withdrawal of such recognition."

8. Chapter IX - Penalties and Procedure Rules 29 to 40 provide for Rules governing discipline, Disciplinary authority, Suspension, Nature of penalties, Petty punishments, Procedure for imposing major penalties, Procedure for imposing minor penalties, Procedure for imposing petty punishments, Special procedure in certain cases, Provisions regarding members of the Force taken from State Government, Reduction in rank, etc. and Withholding of increments. Rule 37 is quoted:

"37.Special procedure in certain cases.-Notwithstanding anything contained in Rule 34, Rule 35 or Rule 36, where a penalty is imposed on a member of the force-

(a) on the ground of conduct which had led to his conviction on a criminal charge; or

(b) where the disciplinary authority is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in the said rules.

The disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit.

A member of the force who has been convicted to rigorous imprisonment on a criminal charge shall be dismissed from service. In such case no evidence need be given to prove the charge. Only a notice shall be given to the party charged proposing the punishment of dismissal, for his having been convicted to rigorous imprisonment and asking him to explain as to why the proposed punishment of dismissal should not be imposed."

9. Chapter X - Rules 41 to 50 deal with Appeals against order of suspension, Appeals against order imposing penalties, Period of limitation for appeals,

Form and contents of appeal, Submissions of appeals, Withholding of appeals, Transmission of appeals, Considerations of appeals, Implementation of orders in appeal, Revision, Dies non, Petitions and Other methods forbidden respectively.

10. Chapter XII - Miscellaneous, Rule 59 amongst others provides for Free accommodation. Appendix A to Rule 15 is Form of Agreement executable by the persons recorded therein for appointment to the Force.

11. Section 8 provides for dismissal, removal, compulsory retirement or reduction in rank of any enrolled member of the Force for remiss or negligence in the discharge of his duty or unfit for the same or he may be awarded any one or more of the punishments mentioned in subsection (ii)(a) to (f) for discharge of duty in a careless or negligent manner or who by any act of his own renders himself unfit for the discharge thereof. This power is made subject to the provisions of Article 311 of the Constitution and any such Rules as the Central Government may make under this Act, which means, Article 311 has been made applicable. Article 311 has been called "unique in world constitutionalism" (U.Baxi in his Introduction to M.Rama Jois; Service under the State, XLV(1987). It places two restrictions on the prerogative of dismissal at pleasure envisaged under Article 310. The two safeguards are that person employed in civil capacities under the Union or State shall not be dismissed or removed by an authority subordinate to that by which he was appointed; and no such person shall be dismissed or removed or reduced in rank except after an inquiry as provided in clause (2). But where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry or where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry, the two safeguards are not available. Article 311 of the Constitution has been made applicable to the members of the CISF. Besides, CISF Act, 1968 includes cases of members of Force on whom order for compulsory retirement is passed. Section 8 is made subject to provisions of Article 311 of the Constitution and such Rules as the Central Government may make under the Act. Section 22 of CISF Act, 1968 is the rule making power, to be exercised without prejudice to the generality of the foregoing powers and power under Rule 37 can be culled out of this provision. Rules 34 to 36 deal with procedure for

imposing major penalties, minor penalties and petty punishments, which has been excluded in matters falling under Rule 37. It provides for imposition of a penalty on a member of the Force on the ground of conduct which has led to his conviction on a criminal charge or where the disciplinary authority is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in the said rules. For taking this course, the disciplinary authority should be satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said Rules. The reasons should not be vague, improper, fanciful and irrational. The Authority must apply mind to the physical facts before taking decision to dispense with the departmental inquiry. It should not be the outcome of a whim or caprice. The decision must show that the Authority verified the correctness of information as to the allegations fortifying the conclusion by independent material. Thereafter, the disciplinary authority must consider the circumstances of the case and pass the order. The order should have nexus with the facts of the case, otherwise, it is assailable, discretion being exercised improperly and unreasonably.

12. Every power, vested in an Authority, has to be exercised wisely and rationally. Where the Authority is constituted under statute to carry on statutory powers with which it is entrusted, if an attempt is made to exercise those powers corruptly as under the influence of bribery, or mala fide for some improper purpose, such an attempt must fail. No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives and any action purporting to be that of the body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative. It may be also possible to prove that an act of the public body, though performed in good faith and without the taint of corruption, was so clearly founded on alien and irrelevant grounds as to be outside the authority conferred upon the body, and therefore inoperative. It is difficult to suggest any act which would be held ultravires under this head, though performed bona fide, said Warrington L.J. in Reg v. Governors of Darlington School (1844) 6 Q B 682 at pg. 715. In legal parlance it would be a case of a fraud on a power, though no corrupt motive or bargain is imputed. Sometimes there may be cases where the purposes sought to be achieved are mixed, some relevant and some irrelevant. In the later case, action may be invalidated for lacking true spirit for which the power has been vested. May be,

it is ultravires of power exercised by the authority. In Union of India v Tulsiram Patel (AIR 1985 SC 1416), the Apex Court in para 130 said that:

> "The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform : capable of being put into practice, done or accomplished : feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner : to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to given evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through other threatens, intimidates and terrorizes the officer who is the disciplinary authority or member of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline

and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause(3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of Arjun Chaubey v. Union of India and others, [1984] 3 S.C.R. 302, is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry

were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter.

13. Thereafter, in paragraphs 133 and 134, the Apex Court said:

"The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

It is obvious that the recording in writing of the reason for dispensing with the inquiry must proceed the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particular, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances."

14. Where the Court finds the reasons irrelevant, unlawful and vague, then the recording of satisfaction by

the authority would be an abuse of power conferred on it, and the impugned order of the authority be invalidated. Of course, the Court will not pass judgment examining the sufficiency of the reasons and substitute its opinion for that of the authority in the prevailing situation. This rule is exception to the general rule extending opportunity to defend himself by the delinquent. It is an extraordinary power. Consequently, for exercising extraordinary power, extraordinary circumstances should exist. Otherwise, the power may corrupt the authority in acting and defeat the purpose of vesting such powers in the authority. Power has been given for public purpose, therefore, it must be exercised in public interest. Two rules of natural justice, namely, nimo Judex in causa sue and audi alteram partem, have a definite meaning and connotation in law, their content and implication well understood and firmly established, exception being statutory rule to the contrary and exceptional circumstances calling for modification or exclusion to meet the necessities of situation. Therefore, dispensation of inquiry must not be done lightly, arbitrarily with ulterior motive or merely to avoid the holding of an inquiry. The precedents, where inquiry has been dispensed with, relate to extraordinary situations instead of routine delinquencies. Facts in Tulsiram's case (supra) were extraordinary, so were in other cases of similar nature.

15. In Jaswant Singh v. State of Punjab and others (AIR 1991 SC 385), the Apex Court said:

> "The decision to dispense with the departmental enquiry cannot be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. In the instant case it was alleged that the delinquent Police Officer instead of replying to the show cause notices, instigated his fellow police officials to disobey the superiors. It was also alleged that he threw threats to beat up the witnesses and the Inquiry Officer, if any departmental enquiry was held against him. No particulars were given. It was not shown on what material the concerned authority came to the conclusion that the delinquent had thrown threats. The satisfaction of the concerned authority was found to be based

on the ground that the delinquent was instigating his colleagues and was holding meetings with other police officials with a view to spreading hatred and dissatisfaction towards his superiors. It was not shown that the concerned authority had verified the correctness of the information leading to the said allegation. Therefore, it could not be said that the subjective satisfaction of concerned authority as to dispensation of departmental enquiry against the delinquent was fortified by independent material. Thus, the order of dismissal passed against the delinquent would not be sustainable."

16. In Indian Railway Construction Co. Ltd. vs. Ajay Kumar (2003 SCC (L&S) 528), the Apex Court said:

"The judicial review of administrative action in the field of discretion is exercisable where there is confinement to cases of failure to exercise discretion and excess or abuse of discretionary power of illegality, irrationality and procedural impropriety. Non consideration or non-application of mind to relevant factors renders exercise of discretion manifestly erroneous calling for judicial interference. Discretion must be exercised reasonably. Reasons or exercise should be proper."

17. In Union of India and others vs. Balbir Singh and others (AIR 1998 SC 2043) and Sahadeo Singh and others v. Union of India (2003 SCC (L&S) 1010), the circumstances were extraordinary, said the Apex Court, for dispensing with the enquiry. In the former case, the delinquent, assassin of Prime Minister Indira Gandhi acquitted by the Apex Court was found involved in activities subversive to national security on the material assessed for arriving at the satisfaction by the authorities, in the latter, the authority coming to the conclusion that no independent evidence was expected against the delinquent due to prevailing fear amongst the witnesses. Division Bench in Nitin Janardhan Raut v. State of Maharashtra and another (2002 II CLR 940) holds that the language of Article 311(2)(b) does permit the dispensing with departmental inquiry in certain cases for reasons to be recorded in writing. But those reasons must have reasonable nexus to the approach of dispensing with the inquiry. The reasons given in this case on the face of it are improper. Opportunity to show cause was not given as required by proviso to Section 26 of Bombay Police Act. Recourse to Article 311(2)(a) is a

colourable exercise of power to avoid holding of departmental inquiry. Similarly, Division Bench of this Court in Gobindbhai Muljibhai Parmar and others vs. J.Mahapatra and another (1986 GLH 189), held that inquiry cannot be dispensed with lightly, arbitrarily or out of ulterior motive.

18. The petitioners were in the security staff of IPCL, Baroda. At the intervention of CISF, security of IPCL is entrusted to CISF. Petitioners say, they protested because the matter was discussed between management of IPCL, CISF and their representative, and they opted to join CISF on assurance that they would not be transferred out of IPCL till they reach the stage of Inspector, but denied by CISF. This statement of petitioners is supported by official journal of IPCL "Prerana". IPCL does not deny that this publication is not theirs. IPCL neither denies the statement made in "Prerana", the official journal, nor the contents relatable to the settlement. Petitioners protested their compulsory transfer from IPCL, Baroda to elsewhere in 1982, and litigation to that effect is still pending in the Court, merit of which we are not required to deal. However, it is a circumstance to appreciate the action taken and pointed out by the Assistant Commandant in his report. They represented to IPCL repeatedly to honour the assurance extended to them with no result. Only 28 demand restoration of their employment in IPCL highlighting the plea of their lands having been taken for the establishment, and transfer would mean dislocation from neighbourhood of IPCL, etc. They sat in dharna outside IPCL Office. There is no evidence pointing out interference in the functioning of IPCL; neither with the police nor with the CISF or with IPCL, employees to go on hunger strike with them. Slogans are on placards. There is no commotion. There is no intimidation. First Information Report is registered by the civil police simply under Section 309, Indian Penal Code, namely, that hunger strikers were losing weight and health, therefore it amounted to committing suicide. There is no F.I.R. at the instance of CISF or IPCL with regard to committing of offence of criminal trespass into IPCL or CISF Offices or instigation of any other members of CISF or employees of IPCL, etc. Section 7 of CISF Act, 1968 provides that every supervisory officer placed in charge of the protection and security of an industrial undertaking shall subject to any directions that may be given by the Central Government or the Director General in this behalf, discharge his functions under the general supervision, direction and control of the Managing Director of that undertaking. It is not contended by the

respondents that they were directed by the Central Government or Director General not to follow the instructions of Managing Director, IPCL, therefore, there is no material to suggest that In-Charge, Security at the Undertaking had instructions from the Managing Director, IPCL to take particular action against the petitioners. This is another circumstance to demonstrate the mind set of the respondents against the petitioners.

19. The Note by Y.N.Sharma, Assistant Commandant/CISF dated 23-11-1985 records that:

"No.IC-17013/CISF/IPCL/85/___ November 1985
Sub: PREJUDICIAL AGITATIONAL ACTIVITIES OF IPCL/EIL OPTEES ABSORBED IN CISF UNIT IPCL, BARODA.

It is submitted that the Hon'ble High Court of Gujarat, in its oral judgement dated 22/23-8-1985, precisely gave the following orders in the 29 CISF personnel (optees) transfer case which were heard by Hon'ble High Court in Civil Revision Application No.654 to 668 and 669 to 682 of 1985 filed by the Department.

a) "All Civil Revision Applications from 654 to 682 filed by the Department have been admitted.
b) Order earlier passed by Trial Court and First Appellate Court have been quashed and set aside.
c) In view of the peculiar facts of this case and in view of the fact that plaintiffs have not reported to their place of transfer, the Trial Court is directed to finally dispose off the suit within three months from today. The petitioners (CISF) are directed not to take any action against plaintiffs till then."

02. That despite the fact as enumerated above, these 29 CISF Personnel (Optees) as per list attached sent a joint petition dated 27-10-1985 addressed to C & MD, IPCL, with a copy to District Collector, Baroda, Police Commissioner, Baroda, Commandant, CISF and other senior officers of State and Central Government, knowing fully that they are members of the Armed Force of the Union of India and submission of

such joint petition amounts to act of indiscipline as envisaged in Rule 50 sub-rule 3 of Rules, 1969.

03. That out of 29 CISF personnel (optees), 28 fromed (sic) a group, and pitched a tent outside the Corporate Office on 14.11.1985 and displayed play-cards containing the following demands in Gujarati :-

a) That they had been employees of IPCL before absorption in CISF and as agreed at the time of induction, they should not be posted to other CISF Units till they are promoted to the rank of Inspector.
b) That the transfer orders issued against them should be withdrawn.
c) That since they had been employees of IPCL and EIL Management should provide job to them in IPCL plant in case it cannot get the posting order withdrawn.
d) That the employment of 30 CISF personnel (optees) in IPCL is a very small thing for management of IPCL.

04. That the CISF personnel (optees) namely H C J.S.Garoda along with Naik R R Pawaskar sat on the fast unto death in the tent already pitched for the purpose w.e.f. 15.11.1985 and others were just seen sitting by the side of these two fasting CISF personnel (optees). A copy of SHO Jawaharnagar Police Station letter is enclosed for ready reference.

05. That from 19.11.1985, these optees are raising following slogans twice daily at o9.oo hrs. which are the shift-in and shift-out times of IPCL employees respectively.

a) IPCL ne kya kiya, dhokha kiya.
b) Hamari mangen leke rahenge.
c) Inquilab zindabad.
d) Hum sub ek hain.
e) Hum se jo takarayega, mitti me mil jayega.

06. That raising of slogans from venue by a group of CISF personnel (optees) are adversely affecting the good order and discipline of the CISF Unit, IPCL, Baroda, in particular and CISF in general, and also likely to lead to a grave

law and order situation in days to come. In addition, the aforesaid acts of these CISF personnel have caused disaffection amongst the members of the Force.

07. That Head Constable J.S- Garoda was arrested by local Police on 23.11.85 around 11.3o hours. the eighth day of the fast unto death, in an offence of attempt to commit suicide, and a case was registered against him vide Crime No.190/1985 under section 309 IPC by S.H.O. Jawaharnagar Police Station.

08 That the agitational path and prejudicial activities as enumerated above, adopted by these 28 CISF personnel (optees) shall be continuing in future and they will, in a batch of two, be staging fast unto death in order to pressurising the CISF authorities for redressal of their illegitimate demands/grievances or reversal of orders, which patently amounts to gross act of indiscipline, as envisaged in Rule 51 CISF Rules 1969.

09. That the said group of 28 CISF personnel (optees) caused their programme of agitation published in the local newspapers viz. "Sandesh", "Times of India", continuously for several days as is evident from the enclosed news paper cuttings. Not only this, HC M K Parmar who is representing the said group of CISF Personnel (Optees) is continuously sending the applications to the Management regarding their programme of fast unto death and also intimating IPCL Management that the responsibility for non-action rests with the Management whereas the IPCL Management has nothing to do whatsoever with the cause of fast unto death (copy enclosed). The aforesaid actions of these CISF Personnel (optees) are against the clause 15(A) sub-clause (c) of CISF Act 1968, and are unwarranted.

11. That since the aforesaid act of gross indiscipline and misconduct on the part of these 28 CISF Personnel (Optees) are causing disaffection amongst the members of the Force particularly in the light of the fact that these members of the Force have to carry arms and ammunitions for the lawful discharge of their duties, and continuation of which may create a serious law and order problems, if not checked

immediately, it is, therefore, requested that immediate departmental action may be taken against these CISF personnel to avoid aggravation in situation and to maintain discipline.

Submitted please.

Sd/- Sd/-
(Illegible) (Y.N.Sharma)
ASSTT. COMMANDANT/CISF

COMMANDANT

I have carefully gone through the circumstances of the case enumerated in note from NSP 1 to 3 and find that following are the sufficient and reasonable reasons for taking recourse to Rule 37(b) of CISF Rules 1969 as it is not possible to hold departmental enquiry in the prevailing situation against No.7221123 Head Constable J.S. GARODA, due to his being involved in agitational activities.

1. No.7221123 Head Const. J.S.GARODA having formed a group pitched a tent outside the Corporate Office on 14-11-1985.
2. No.7221123 Head Const. J.S.GARODA staged fast unto death agitation along with NO.7221130 Naik R.R. Pawaskar w.e.f. 15-11-1985 in the tent already pitched for the purpose infront of IPCL Corporate Office and is continuing to sit with the agitating CISF Personnel (Optees).
3. No.7221123 Head Const. J.S. GARODA is continuing to raise anti-Government and Management slogans w.e.f. 19-11-1985, which is adversely affecting the discipline of CISF Unit, IPCL in particular and CISF in general.
4. No.7221123 Head Const. J.S.GARODA is continuing to instigate/incite other serving force personnel of the Unit to resort to fast unto death and be united to launch agitation for reversal of orders.

In the circumstances/reasons outlined above, it is not reasonably particable (sic) to hold regular departmental enquiry under Rule 34 of CISF Rules 1969. I have therefore come to a

definite conclusion that No.7221123 Head Const. J.S.GARODA, should be dismissed from Government service under Rule 37 (b) of CISF Rules 1969 with immediate effect.

Sd/-
(M K CHOPRA)
COMMANDANT/CISF"

20. Perusal of Note by Y.N.Sharma, Assistant Commandant refers to cases against transfer pending in appellate Court. Joint representation to authorities, publication of strike notice in newspapers, raising of slogans, etc., call for immediate departmental action. They do not demonstrate extraordinary circumstances. Cases against transfer are stated to be pending. Filing of joint petition against the transfers is not an extraordinary circumstance nor is pitching of tent and two of them going on hunger strike. The slogans are of routine kind. They are neither against IPCL nor against CISF. There is no call to other members of CISF unit or IPCL employees to join the strike. Therefore, the statement that they were making anti-Government and anti-management slogans and were instigating/inciting other serving Force personnel of the Unit to resort to fast unto death and unite to launch agitation for reversal of orders is without verification by the Commandant. Petitioners were relieved from service, therefore, they do not possess arms and ammunition. The Assistant Commandant suggests immediate departmental action to avoid aggravation in situation and to maintain discipline. He does not suggest dispensation of inquiry. He does not say holding of inquiry is impracticable. He does not say the situation is tense. He does not say other members of CISF and IPCL joined strike at their instigation/incitement nor it has happened. He does not say witnesses may not come forward due to apprehension to their lives, otherwise, witnesses in this case could be high officials of IPCL and CISF, who could not be put to intimidation. Therefore, circumstances do not make out extraordinary case for taking recourse to Rule 37 of CISF Rules, 1969. It seems, inquiry has been dispensed with for no other reason but to get rid of the petitioners and render the appeals infructuous. Power under Rule 37 of CISF Rules, 1969 has not been exercised properly, genuinely to meet with extraordinary situation, rather it is colourable exercise of power, therefore, action taken is ultravires. The appellate authority also failed to correct the error.

21. What emerges out of this discussion is that dismissal of petitioners is not in accordance with law,

therefore, set aside. Petitioners are reinstated on the posts which they were holding prior to their dismissal. They shall be deemed to be in continuous service throughout and entitled to all consequential benefits, including salary and allowances revised from time to time and promotions. It is declared that the quarters in their occupation shall not be unauthorised. There shall be costs of Rs.500/- to be paid to the petitioners. Rule is made absolute.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

[sndevu]
ps